



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### *SOUTHWEST REGIONAL OFFICE*

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Secretary of Natural Resources

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Director

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Regional Director

## **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION – ORDER BY CONSENT ISSUED TO VIRGINIA CARBONITE, LLC**

**Registration No. 11256**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309, and -1316, between the State Air Pollution Control Board and Virginia Carbonite, LLC, regarding Virginia Carbonite, LLC, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
2. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1 - 1185.
4. “FCE” means a full compliance evaluation by DEQ staff.
5. “Facility” means the Virginia Carbonite, LLC facility located at 4318 Blackwood Rd, Wise County, Virginia.
6. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation

under Va. Code § 10.1-1309.

7. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the Virginia Air Pollution Control Law.
8. “PCE” means a partial compliance evaluation by DEQ staff.
9. “Permit” means a minor New Source Review Permit to modify and operate a coal synthetic fuel production facility which was issued under the Air Pollution Control Law and the Regulations to Virginia Carbonite, LLC, effective September 9, 2014, significantly amended January 20, 2015.
10. “PTU” means Pyrolysis Thermal Unit.
11. “Regulations” or “Regulations for the Control and Abatement of Air Pollution” means 9 VAC 5 chapters 10 through 80.
12. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
13. “Va. Code” means the Code of Virginia (1950), as amended.
14. “VAC” means the Virginia Administrative Code.
15. “Virginia Air Pollution Control Law” means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
16. “Virginia Carbonite, LLC” means Virginia Carbonite, LLC, a company authorized to do business in Virginia and its affiliates, partners and subsidiaries. Virginia Carbonite, LLC is a “person” within the meaning of Va. Code § 10.1-1300

### **SECTION C: Findings of Facts and Conclusions of Law**

Virginia Carbonite, LLC owns and operates the Facility in Wise County, Virginia. The Facility is the subject of the Permit which allows the company to operate the coal synthetic fuel production facility.

1. On January 8, 2015, DEQ staff conducted a PCE for review of the performance test results from testing conducted at the Facility on October 1-2, 2014. Review of the submitted report demonstrated the test results for PM-10 emissions were 8.0 lbs/hr and the proximate analysis information was not provided for samples taken during testing.

2. Condition No. 17 of the Permit states, "Emissions from the operation of the PTU and briquette kiln shall not exceed the limits specified below:...

PM-10            0.23 lb/hr..."

3. 9 VAC 5-80-1180 requires that, "...C. Minor NSR permits may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-260. The following criteria apply in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:  
...3. The standard may prescribe, as an alternative to or a supplement to a limit prescribed under subdivision 1 of this subsection, equipment, work practice, fuels specification, process materials, maintenance, or operational standards, or any combination of them..."
4. 9 VAC 5-50-260 requires that, "A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of emissions limitations representing best available control technology, as reflected in any term or condition that may be placed upon the minor NSR permit approval for the facility..."
5. Condition No. 23 of the Permit states, "Concurrently with the tests required by Conditions 21 and 24 of this permit, the permittee shall sample the coal input to the Pyrolysis Thermal Unit (PTU) and the product solids output from the PTU and perform a proximate analysis of both streams. Two copies of the analyses shall be submitted to the Director, Southwest Regional Office with the report required in Conditions 21 and 24 of this permit."
6. 9 VAC 5-170-160(A) - (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits."
7. Va. Code § 10.1-1322(A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.
8. On January 14, 2015, based on the results of the January 8, 2015 PCE, the Department issued a Notice of Violation No. ASWRO000019 to Virginia Carbonite, LLC for the violations described in paragraph C(1) through C(5),

above.

9. On January 22, 2015, DEQ received an electronic response to the NOV from the Facility. The Facility requested a meeting with DEQ to discuss the NOV.
10. On January 26, 2015, DEQ met with representatives of the Facility to discuss the violations.
11. On February 12, 2015, DEQ received the engineering report of the venturi scrubber system electronically.
12. On March 26, 2015, DEQ received electronic correspondence indicating that the Facility had operated 1,002 hours since the performance test. This was verified as 59 days by DEQ personnel.
13. On March 30, 2015, DEQ sent correspondence to Virginia Carbonite, LLC requesting Virginia Carbonite, LLC to conduct additional performance testing and concurrent VEE to verify compliance with the PM10 emission limit established in the Permit. The protocol was to be submitted by April 17, 2015 and testing was set forth to be conducted by May 9, 2015.
14. On April 20, 2015 (signed April 15, 2015), DEQ received the stack test protocol for the Facility. Stack testing was completed on May 6, 2015 and the stack test report was submitted to DEQ on June 10, 2015. Review of the submitted report demonstrated the test results for PM-10 emissions were 1.71 lbs/hr. On July 10, 2015, DEQ staff conducted a PCE for review of the performance test results from testing conducted at the Facility on May 6, 2015.
15. On June 24, 2015, DEQ met with representatives of Virginia Carbonite, LLC to discuss the violations.
16. On July 9, 2015, based on the results of the July 10, 2015 PCE, the Department issued a Notice of Violation No. ASWRO000224 to Virginia Carbonite, LLC for the violations described in paragraph C(14).
17. On August 20, 2015, DEQ staff conducted a FCE for compliance with the Permit. Review of the permit conditions demonstrated the Facility had not sampled, analyzed, nor performed emission calculations for arsenic and beryllium in the coal and carbonite as required by the Permit every six months. Additionally, analytical results and emission calculations had not been submitted to the DEQ within 45 days after each sampling event. Also, the Facility was not maintaining sufficient records to demonstrate hourly, daily and monthly throughput of coal.
18. Condition 10 of the Permit states, "The total throughput of coal to the facility, including binder coal, shall not exceed 4.0 tons/hour, 96 tons per day and 33,566 tons per year. Annual throughput shall be calculated monthly as the sum of each

consecutive 12-month period...”

19. 9 VAC 5-80-1180 requires that, “...D. Minor NSR permits will contain, but need not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:...c. Limits on raw material usage rate...”
20. Condition 21(a) of the Permit states, “The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit...a. Daily and annual throughput of coal, including binder coal, to the facility...”
21. 9 VAC 5-50-50 requires that, “H... the owner of a new or modified source subject to the provisions of this chapter shall...maintain records...in a manner and form and using procedures acceptable to the board.”
22. Condition 35 of the Permit states, “Emission from the operation of the PTU and briquette kiln shall not exceed the limits specified below:

Arsenic	0.0082 lb/hr	0.0343 ton/yr
Beryllium	0.00036 lb/hr	0.00149 ton/yr

These emissions are derived from the estimated overall emission contribution from operating limits...”

23. 9 VAC 5-60-320 requires that, “2. The owner of new or modified sources shall employ best available control technology as may be approved by the board for the control of toxic pollutants.”
24. Condition 36 of the Permit states, “As specified below, the permittee shall sample and analyze coal and carbonite, and perform emissions calculations using the acquired data to verify compliance with the emission limitations...b. Sampling, analysis and emission calculations shall be performed every six (6) months...c. Analytical results and emission calculations shall be reported to the Director, Southwest Regional Office within 45 days after each sampling event...”
25. 9 VAC 5-60-340 requires that, “The owner of an affected facility shall upon the request of the board submit such information as may be needed to determine the applicability of, or compliance with, this article. The board may determine the schedule, manner and form for the submittal of the information.”
26. Based on the results of the January 14, 2015 PCE, the January 26, 2015 meeting, the June 24, 2015 meeting, the July 10, 2015 PCE and the August 20, 2015 FCE, the Board concludes that Virginia Carbonite, LLC has violated Conditions 10, 17, 21(a), 23, 35 and 36 of the Permit, 9 VAC 5-50-50, 9 VAC 5-50-260, 9 VAC 5-

60-340 and 9 VAC 5-80-1180 as described in paragraphs C(2) through C(5), (C)14, and C(17) through C(25), above.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Virginia Carbonite, LLC and Virginia Carbonite, LLC agrees to:

Perform the action described in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Virginia Carbonite, LLC for good cause shown by Virginia Carbonite, LLC, or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified in Section C of this Order and NOV No. ASWRO000019 dated January 14, 2015 and NOV No. ASWRO000224 dated July 9, 2015. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Virginia Carbonite, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Virginia Carbonite, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Virginia Carbonite, LLC declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by Virginia Carbonite, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Virginia Carbonite, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Virginia Carbonite, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Virginia Carbonite, LLC shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which the parties intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Virginia Carbonite, LLC. Nevertheless, Virginia Carbonite, LLC agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Virginia Carbonite, LLC has completed all of the requirements of the Order.
  - b. Virginia Carbonite, LLC petitions the Director or his designee to terminate the


Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Virginia Carbonite, LLC.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Virginia Carbonite, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Virginia Carbonite, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Virginia Carbonite, LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Virginia Carbonite, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Virginia Carbonite, LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Virginia Carbonite, LLC voluntarily agrees to the issuance of this Order.

And it is ORDERED this 19<sup>th</sup> day of October, 2015

  
Allen J. Newman, P.E. - Regional Director  
Department of Environmental Quality



Virginia Carbonite, LLC voluntarily agrees to the issuance of this Order.

Date: 10/19/15 By: Richard A Wolfe  
Richard Wolfe, PhD, Member of LLC  
Virginia Carbonite, LLC

Commonwealth of Virginia

City/County of WASHINGTON

The foregoing document was signed and acknowledged before me this 19<sup>th</sup> day of  
OCTOBER, 2015, by RICHARD A. WOLFE who is  
MEMBER OF LLC of Virginia Carbonite, LLC, on behalf of  
the corporation.

George Robert Feagins, II  
Notary Public

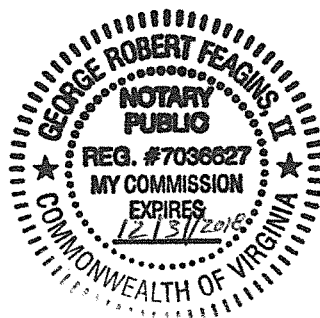
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Registration No.

DECEMBER 31, 2018

My commission expires:

Notary Seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Virginia Carbonite, LLC:**

1. Shall submit a compliance plan within 45 days of the execution of this Order, detailing how the Facility will comply with the conditions of the Permit. The compliance plan may include a permit modification application. If a permit application is submitted it must contain an acceptable engineering method/calculation for quantitatively determining actual inlet emissions to the scrubber.
2. Shall conduct performance testing and a concurrent Visible Emission Evaluation to verify compliance with the PM10 emission limit required by the most current effective permit. The retesting must include 1) concurrent sampling of the coal input to the Pyrolysis Thermal Unit (PTU) and of the product solids output from the PTU, and 2) performance of a proximate analysis of both, as required by the most current effective permit. If the aforementioned Compliance Plan does not include a permit modification application testing must be completed within 180 days of the execution of this Order. If a permit modification application is submitted, testing shall be completed within 180 of the modified permit issuance or notification by DEQ that the permit modification request is not approved. If the Facility is shutdown upon execution of this Order, a notification of start-up shall be submitted to DEQ within 5 days of restart and performance testing shall be completed within 180 days of restart date or within 180 days of restart after permit issuance if permit modification application is submitted. A protocol shall be submitted 30 days prior to performance testing. Two copies of all test results shall be submitted to DEQ within 45 days of test completion.

### **2. Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, Virginia Carbonite, LLC, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true,

accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

**3. DEQ Contact**

Unless otherwise specified in this Order, Virginia Carbonite, LLC shall submit all requirements of Appendix A of this Order to:

Crystal C. Bazyk  
Enforcement and Air Compliance/Monitoring Manager  
VA DEQ – SWRO  
355-A Deadmore Street  
Abingdon, VA 24210  
(276) 676-4829  
crystal.bazyk@deq.virginia.gov